

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ABRAHAM RUIZ,

Defendant.

CASE NO. 8:07CR329

AMENDED TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“PSR”). See Order on Sentencing Schedule, ¶ 6. The government adopted the PSR. (Filing No. 22.) The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The plea agreement provides that the government agrees the Defendant complied with 18 U.S.C. § 3553(f)(2) & (5), and that if the Court and probation office determine that he has complied with the remaining requirements he should receive the benefit of the safety valve. (Filing No. 17, ¶ 6(c).) The PSR states that according to the U.S. Attorney the Defendant has not met the fifth safety valve requirement. As stated in the Addendum to the PSR, the Defendant objected to the initial draft of the PSR because credit was not given for the safety valve. The probation officer responded that the government's position was that, as of the date the Revised PSR was drafted, the Defendant did not qualify for the two-level reduction. In light of the government's statement in plea agreement, the Court's tentative finding is that the safety valve applies.

IT IS ORDERED:

1. The Court's tentative finding is that the Defendant's objection to the Revised Presentence Investigation Report (Addendum) is granted, ¶ 27 shall include an adjustment for the safety valve, and this adjustment shall be reflected in related paragraphs of the Revised Presentence Investigation Report;

2. The Court's tentative findings are that the Revised Presentence Investigation Report is otherwise correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall do so orally at sentencing; and

4. Absent any challenge as described in paragraph 3 of this Order, my tentative findings may become final.

DATED this 21st day of February, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge